

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. LORENTS GROSFIELD**, on January 14, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Steve Doherty (D)
Sen. Sue Bartlett (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 163, SB 176, SB 179,
1/11/1999
Executive Action: SB 22, SB 179, SB 33

HEARING ON SB 179

Sponsor: **SEN. RIC HOLDEN, SD 1, Glendive**

Proponents: **Greg Petesch, Code Commissioner**

Opponents: **None**

Opening by Sponsor:

SEN. RIC HOLDEN, SD 1, Glendive, introduced SB 179 which clarified that a temporary driving permit issued to a person arrested for driving under the influence of alcohol or drugs is not effective until twelve hours after issuance.

Proponents' Testimony:

Greg Petesch, Code Commissioner, explained that this is suggestive legislation which he brought before the committee. This bill clarifies that after a person's drivers' license had been seized for refusal to submit to a breath test on a suspected DUI, the temporary driving permit that is issued by the police officer to the individual who refuses the test does not take effect until 12 hours after it has been issued. In City of Helena v. Danichek, the individual refused the breath test and was issued the temporary driving permit. In his special concurring opinion on the case Justice Nelson pointed out that Montana statute on issuance of temporary driving permits is unique in that it does not have a delayed time period for taking effect. Section 61-8-402, MCA, requires that a drunk driver be issued a temporary driving permit as the driver leaves the police station and even before the driver is sober.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: SEN. HOLDEN closed on SB 197.

{Tape : 1; Side : A; Approx. Time Counter : 9.09}

HEARING ON SB 176

Sponsor: SEN. JOHN BOHLINGER, SD 7, Billings

Proponents: Wally Melcher, Developmental Disabilities Systems
Advocacy Committee (DDSAC)
Rose Hughes, Executive Director, Montana Health
Care Association.
Craig Sweet, Montana Public Interest Research
Group
Jeanne Bauman, Montana Credit Union Leagues
Susan DeBree, United Methodist Church
Christine Kaufman, Montana Human Rights Network
Al Smith, Montana Trial Lawyers Association

**Mike Hanshew, Department of Health and Human
Services**

Opponents: None

Opening by Sponsor: SEN. JOHN BOHLINGER, SD 7, Billings, introduced SB 176. He remarked that Montana elder abuse laws were enacted in 1983 and have had only minor amendments since that time. Who can be penalized, the seriousness of the crime, and the penalties have all remained the same for the past 16 years. Changes in health care, combined with the advent of technological advances that make exploitation cheap and fast, and a heightened awareness of the various forms that abuse may take compels us to strengthen reporting, enforcement and prosecution. The rapid aging of Montana's population in the next century will mean that more seniors will be at risk. The advent of day care centers, residential care homes, assisted living facilities, and home care expansion has increased the risk of abuse and the exploitation of seniors.

Financial exploitation can occur at all income levels. With savings and income severely depleted, many elders and vulnerable adults can lack the resources to buy food, receive medical care or pay the rent. The intent of this bill is to increase incentives for individuals and agencies to report, investigate and prosecute elder abuse. Under current law elder abuse is only a misdemeanor. By increasing the opportunity to prosecute cases for elder abuse as a felony, then reporting, investigation, and prosecution incentives will be enhanced.

The first offense will be classified as a high misdemeanor. The second offense will be a felony. The bill includes technical changes to include financial exploitation and adds mental anguish as abuse. It specifically names individuals who administer a power of attorney, conservatorship, or guardianship as subject to investigation and prosecution. It adds to the list of entities required to report. It allows financial institutions and other entities, who have asked to be specifically listed, the discretion to report alleged exploitation with immunity from liability. It authorizes the department to include evidence of prior abuse committed by a person.

Section 1 adds the word "prosecution" to the intent language. Section 2 clarifies the term "exploitation" to mean diverting assets away from a victim. It specifically includes persons acting with or as powers of attorney, conservators or guardians. Subsection (6) adds "mental anguish" to the definition of mental injury. Subsection (7) clarifies neglect to include someone who has voluntarily or contractually assumed responsibility for a

person. Section 3 adds exploitation as an abuse to investigate and adds the potential for repeated abuse as justification. Section 4 adds to those who are required to report such as assisted living facilities, health and personal care givers, in-home care givers, and employees of the department. Subsection (4) authorizes discretionary reporters. Entities, including banks, are not subject to fine if they do not report. These entities are released from the liability if they do report abuse. Section 5 adds prior abuse committed by a person. Section 6 affirms that case records are confidential. Section 7 adds evidence of exploitation to the list. Section 8 increases the first felony to be a high misdemeanor and the second conviction to be judged a felony. All cases will require financial restitution and mandatory jail time on the second conviction.

Proponents' Testimony: Wally Melcher, Developmental Disabilities Systems Advocacy Committee (DDSAC), spoke in strong support for the rights, good health, and personal safety of individuals with developmental disabilities. This legislation supports their goals by elaborating upon the definitions of exploitation, expanding the list of individuals who must or may report incidents of abuse, neglect, or exploitation and increasing the penalties for perpetrators.

He raised a concern with the term "undue influence" used in Section 2 (3)(b) to describe a means by which an individual could be exploited. Many individuals who work directly with persons who have developmental disabilities, form very close and trusting relationships with those they serve. They teach these individuals a variety of personal and intimate skills including the management and use of their personal property and money. It will be useful if this statute clarified more specifically the line between influencing and unduly influencing a person with a developmental disability so this could be explained to Montana service providers.

In Section 2(3)(a) and (6), the phrases "a pattern of infliction of pain" and "a pattern of infliction of mental anguish" are used. They are uncertain what actually constitutes these two patterns and would find it helpful if this terminology were further defined. Montana's laws should be working documents and tools for those who manage and implement services to persons with disabilities. Written testimony of **Wally Melcher**, **EXHIBIT(jus10a01)**.

Rose Hughes, Executive Director, Montana Health Care Association, presented her written testimony, **EXHIBIT(jus10a02)**.

Craig Sweet, Montana Public Interest Research Group, rose in support of SB 176. He stated that the definition of exploitation mentioned deception, menace and intimidation. Trust and confidence is something that should never be betrayed while giving care to the elderly or those with mental disabilities. This legislation clarified the duties and responsibility that people have to report abuse. Often people are afraid to report abuse. Regarding the language about pattern of inflicting pain or pattern of inflicting mental anguish, he urged caution. Patterns can often be very subtle and go totally undetected by co-workers or family for years.

Susan DeBree, United Methodist Church, spoke in support of SB 176. Elders can be the most vulnerable people in our society and are oftentimes taken advantage of by others who have access to their resources.

Christine Kaufman, Montana Human Rights Network, spoke in support of strengthening laws protecting the elderly and people with development disabilities. A person's human rights do not end when they reach a certain age or acquire a disability.

Jeanne Bauman, Montana Credit Union Leagues, presented her written testimony in support of SB 176, **EXHIBIT(jus10a03)**.

Al Smith, Montana Trial Lawyers Association, stated that this legislation gives needed additions to protect the most vulnerable of our fellow citizens in Montana. It is very important that steps have been taken to encourage reporting of suspected abuse or exploitation.

Mike Hanshew, Department of Health and Human Services, rose in support of SB 176, especially its attempt to address the issue of exploitation and clarification of the reporting requirements of the current law.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 9.38}

Questions from Committee Members and Responses:

SEN. JABS asked for clarification of lines 1 and 2 on page 3. **Rick Bartos, Adult Protective Services, Department of Public Health and Human Services**, explained that this refers to self neglect. Neglect can occur by an individual neglecting their responsibilities to another person. Individuals can also neglect themselves as well. The department tracks self neglect cases and

provides follow up services. This may be an elderly person living alone who does not take sufficient nutrition.

CHAIRMAN GROSFIELD questioned if the word "inability" should be changed to "unwillingness". **Mr. Bartos** stated that the word "inability" provided the groundwork for defining a pre-condition before a social service agency would intervene. The reason a person is not taking nutrition is typically because of dementia or the first stage of Alzheimer's. This is a precondition for the social service agency to help. If a person chooses to make a wrong decision, that's their business and government should not interfere.

SEN. GRIMES raised a concern about a disgruntled employee who is terminated having a standing for retaliation against an employer. He questioned the definition of "pattern". **Mr. Bartos** stated that each case is factually driven. An individual who recklessly or in bad faith retaliates against his employer without reasonable grounds for the referral, will lose his or her immunity protections under the law. In 1983, the legislature provided immunity for mandatory and nonmandatory reporters who have seen or observed this type of behavior. If this was done with gross or wanton disregard of what actually is happening, immunity would not extend. An individual can suffer an infliction of pain by a care giver but it would not result in death or a permanent impairment or bodily disfigurement. If this is not workable for the industry, it could be amended out of the legislation.

SEN. GRIMES asked the sponsor if he would be amenable to striking the language pertaining to a pattern. **SEN. BOHLINGER** responded that he understood the concerns that have been raised with respect to the question of pattern or infliction of pain. He would be in favor of an amendment that would address these concerns.

SEN. JABS questioned whether lines 1 and 2 on page 3 could result in a person being charged with negligence. **Mr. Bartos** stated that a person who neglects himself or herself is not committing a criminal act. If there was a perpetrator who was neglecting another person, it could be referred for prosecution.

SEN. HOLDEN referring to page 2, line 26, questioned if the word "voluntary" may have an adverse affect on volunteers. **Mr. Bartos** stated that volunteers are very important for the social service community. There are situations where people voluntary take on the responsibility to be a care giver simply to be in a position to take advantage of a vulnerable person.

SEN. HOLDEN questioned whether the language on page 3, lines 1 and 2, would allow social workers to step into other person's lives more than necessary. **Mr. Bartos** responded that there are limited resources and persons to address elder abuse and developmentally disabled person abuse. If relatives or family members are available, the social services policy is to refer these matters to the relatives and to the family. The government is a last resort when no one else will care for these people. Current law contains a presumption that any person, including an older person, maintains their mental capacity to make bad decisions. Unless a district court determines that a person is not competent, they defer to the judgment of the person who is self neglecting himself.

SEN. GRIMES asked **Ms. Hughes** whether the reporting requirements would be unreasonable burdens for nursing homes. **Ms. Hughes** responded that they supported reporting requirements and are currently required to report under this law and federal law if they are aware of instances of abuse. With this legislation, the reporting requirements are expanded to other types of care facilities such as personal care, residential care, and adult foster care.

{Tape : 2; Side : A; Approx. Time Counter : 10:00}

CHAIRMAN GROSFIELD stated that Section 6 contained language regarding confidentiality. He stated that he did not see a prohibition for the person making the report not to turn it over to the press if he or she so desired. **Mr. Bartos** stated that they are unaware of any situations where there has been a wanton or gross release of information that violated an individual's confidentiality rights.

CHAIRMAN GROSFIELD remarked that "undue influence" could be in the eyes of the beholder. **Mr. Bartos** stated that this was a legal term defined by case law. This would include taking advantage of a superior position against another person. An example would be for an attorney drafting a will, knowing that the person had limited ability to understand what was going on, to place his or her name as a beneficiary of the will.

SEN. GRIMES questioned whether the language "pattern of affliction of pain" could be misconstrued to include life sustaining techniques. **Mr. Bartos** stated that the legislature has adopted the Montana Rights of the Terminally Ill Act which includes very defined protocol and procedures by which an individual or a care giver can withhold life sustaining treatment. This act supersedes the Adult Protective Services Act.

CHAIRMAN GROSFIELD questioned whether this would affect hospice. **Mr. Bartos** maintained that a hospice nurse can exploit or abuse an individual, but if the hospice nurse is following the protocol of the hospital in established medical standards, it is not abuse or exploitation.

{Tape : 2; Side : B; Approx. Time Counter : 10.10}

SEN. BOHLINGER remarked that there were some splendid recommendations made with respect to clarification of some of the language in this bill. This includes clarification and better understanding of terms such as "pattern of infliction of pain" and "mental injury". This bill will encourage more people to come forward regarding elder abuse and to act in a responsible manner. He was pleased with the willingness of financial institutions to be supportive of this legislation. Financial exploitation can be subtle and destructive. He raised a concern recently pointed out to him that there appears to be a conflict in the title found on page 1, line 10, which spoke of the first offense as being a felony. It is their intent to identify the first offense as a high misdemeanor. This is in conflict with page 10, line 10, where the first offense is listed as a misdemeanor.

{Tape : 2; Side : B; Approx. Time Counter : 10.16}

HEARING ON SB 163

Sponsor: **SEN. DALE MAHLUM, SD 35, Missoula**

Proponents: **Russ Ritter, Montana Rail Link**
 Fran Marso, United Transportation Union
 Steve Wade, Burlington Northern

Opponents: **None**

Opening by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, introduced SB 163, which is being proposed to prevent accidents and casualties to person who unlawfully enter upon railroad property. Railroad property belongs to the entity who owns the land upon which the railroad tracks are located. It is important that the people who work on railroads can do so with the ease of mind that their working conditions are the best that can be had. This legislation also talks about vandalism to railroad property. These acts can affect the health and welfare of the public who use this means of public transportation and expect to be safe from any harm that

may come from vandals trespassing upon railroad property. This bill does not take the liability away from the railroad entity in case of mismanagement. This bill addresses removing parts of tracks that will endanger the lives of the passengers and crew members.

{Tape : 2; Side : B; Approx. Time Counter : 10.20}

Proponents' Testimony:

Russ Ritter, Montana Rail Link, stated that this legislation involves a safety issue. In 1997, there were six individuals killed on railroad property in Montana. These individuals were involved in trespassing. In Missoula a 17 year old and a 16 year old were caught on a bridge and couldn't get off. The train could not stop and both of the individuals were killed. Seventeen states have vandalism trespass laws. Wyoming has such a statute and this legislation is being considered in the Idaho Legislature. This law will educate people to the seriousness and the safety concerns that the railroad has about people who are trespassing or committing acts of vandalism on railroad property.

Every time a box car needs to be repainted due to graffiti, this costs the railroad \$3,000. Many times the numbers on a car are painted over and the car cannot be identified. Operation Lifesaver is a program that the railroad put into place several years ago to educate people about the seriousness of trying to beat the train to the crossing. Deaths and serious injuries have been diminishing over the years. Train crews suffer psychological trauma as a result of an accident that causes death or serious injury.

Fran Marcel, United Transportation Union, remarked that several months ago a train carrying containers across the high line of Montana stopped to meet another train. Vandals broke into 20 of the containers. If a train crew member was doing repair work, who knows what would have happened. This legislation should have the potential to protect train crews from being put into unnecessary dangers. The amendments which have been offered address their concerns.

Steve Wade, Burlington Northern, reported that in 1998 Burlington Northern, over its entire system, had over \$2.5 million worth of damage to its rail cars. This involved 10,000 instances. Vandalism was so numerous on new cars and trucks they are now shipped to the dealers in other manners. This is a safety bill

which will enhance awareness of the risks associated with trespassing on railroad property.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BISHOP questioned whether the railroads owned every other section of land on both sides of the track. **Mr. Ritter** confirmed that that was the case. On occasion, the railroads have leased the property for agriculture or other business purposes.

SEN. GRIMES stated that there is a great deal of river access between Townsend and Toston. People park along the railroad right-of-way and then hike across the railroad tracks to go fishing. Would this legislation prevent that access? **Mr. Ritter** responded that fisherman and hunters are the least of their problems. The problem is the persons who do not have recreational intent. As a result of vandalism they have lost signals at public crossings. This recently caused a near accident near Townsend.

SEN. MCNUTT reported that in his business he has received equipment that was severely damaged. He questioned whether this bill would give the railroad enhanced ability to apprehend the vandals. **Mr. Ritter** maintained that there was no legislation that could eliminate the problem. Hopefully education will start with young people. If vandals are caught, there would be serious consequences.

SEN. JABS raised a concern that this may cause a demand for special legislation by individual industries. **SEN. MAHLUM** explained that model legislation for railroad trespass and vandalism is occurring on a national scale.

SEN. HOLDEN remarked that there are current vandalism statutes. This legislation says that the railroads deserve a larger sense of protection in the area of vandalism and trespass. **Mr. Ritter** stated that they are not looking for special treatment but instead are trying to address the issue of safety and use this as an educational tool. This is a serious problem. Six people lost their lives in Montana in 1997 as the result of trespassing. Seventeen states have adopted this type of legislation.

SEN. HOLDEN claimed that to maintain Montana's culture an access amendment would be needed. **Mr. Ritter** responded that they were open to discussion on this matter. They would like to make this as simple as possible which would not include complex paperwork. He agreed to have amendments prepared before the Committee took

executive action. He added that hunters and fisherman are definitely a part of Montana's culture.

SEN. HOLDEN agreed that this should not include paperwork but access should be provided that is easily understandable.

CHAIRMAN GROSFIELD asked for clarification of the amendments which had been presented to the committee, **EXHIBIT(jus10a04)**.

Mr. Ritter explained that on page 4, line 25, the current language stated "a representative of a labor organization who is an employee of the railroad carrier and who represents or is seeking to represent employees of the railroad carrier while conducting union business." They would like to eliminate (8) and insert "is an official of the rail union acting in his or her official capacity."

CHAIRMAN GROSFIELD remarked that the current criminal trespass law contains a penalty of \$500 or six months. This legislation would decrease this to \$100 or 30 days. The penalties are decreased in most instances in comparison to current law. **Mr. Ritter** stated that this is to concur with the federal legislation which is being passed in other states.

CHAIRMAN GROSFIELD stated that railroad property is not necessarily identified. The railroad may have a 400 ft. right-of-way but it may be fenced at only 150 ft. **Mr. Ritter** responded that the actual property they are concerned about would be up to the fence

CHAIRMAN GROSFIELD stated that the railroad was oftentimes very close to a river. There is a question of who owns the river. This would also affect fishing. **Mr. Ritter** offered to provide language to address both hunting and fishing before executive action was taken on this bill.

SEN. DOHERTY stated that along the river between Helena and Great Falls there are numerous access points that have been used for a long time. Most people park along the highway and cross the railroad tracks while walking to the river. **Mr. Ritter** stated that this legislation is not aimed at the person who needs to cross railroad tracks to get from point A to point B. This question will be addressed in the amendments which will be provided.

{Tape : 3; Side : A; Approx. Time Counter : 11.02}

Closing by Sponsor:

SEN. MAHLUM stated that the important part of this bill is increased safety and signage. If this bill saves one life, it is worth putting into effect.

EXECUTIVE ACTION ON SB 179

Motion/Vote: **SEN. HALLIGAN MOVED THAT SB 179 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON SB 22

Ms. Lane explained that amendments were passed out by **Col. Reap** at the hearing on SB22. The amendments would have added commercial vehicle inspectors in most places where the legislation referred to other officers. She prepared combined amendments, SB002203.avl, **EXHIBIT(jus10a05)**. The Department of Corrections also submitted a proposed amendment that changed the date on which the bill would apply. This has also been incorporated into the amendments.

Motion: **SEN. BISHOP MOVED TO AMEND SB 22.**

Rick Day, Department of Corrections, responded that the amendments do address their concerns. The concern involved grandfathering existing employees. The language states "after" September 30th, which is after the effective date of this act.

SEN. GRIMES asked why commercial vehicle inspectors were being added. **Jim Oberhoffer, Board of Crime Control,** explained that they currently certify GVW officers, numerous law enforcement officers, public safety communicators, etc., to promote their professionalism. There are eight officers who do not fall under any of the certification standards. A basic course has already been developed for those officers.

SEN. MCNUTT questioned why commercial vehicle inspectors needed to be trained as law enforcement officers. **Mr. Oberhoffer** stated that they all fall under the title of peace officers standards of training. They review the curriculum and are able to decertify.

SEN. BARTLETT stated that it was her understanding that the commercial vehicle inspectors are sworn officers. They would not have the same training as a law enforcement officer or a probation and parole officer. Their training would be specific to their particular set of duties. This legislation simply states that the people working in all the different categories of occupations need to have training. If they are not added, then there is no requirement for commercial vehicle inspectors to have

successfully completed an approved course while they are employed.

SEN. GRIMES stated that people who work for certain departments also need to have a very high degree of training and skill in order to perform their jobs. He would not want to include those regulatory positions. **Mr. Oberhoffer** responded that there is a large list of people that they currently do certify. This includes law enforcement personnel, corrections personnel, detention officers, public safety communicators, fish and game personnel, livestock inspectors, coroners, etc. They develop courses of training for these persons. This includes various basic training programs which the Board of Crime Control stands behind for liability issues and further promotion of professionalism.

Vote: The motion to amend SB 22 carried with **SEN. GRIMES** voting no.

Motion: **SEN. BARTLETT MOVED THAT SB22 DO PASS AS AMENDED.**

Discussion:

SEN. BARTLETT remarked that the fiscal note carried a \$16,000 impact. She questioned whether this would go to the Board of Crime Control budget. **Mr. Oberhoffer** affirmed that it would. The Department of Corrections has voluntarily given administrative time to help with the necessary paperwork. They have also provided an instructor.

SEN. BARTLETT asked if this amount was incorporated into the budget request for the Board. **Mr. Oberhoffer** stated that it was not.

Vote: The motion carried unanimously.

{Tape : 3; Side : A; Approx. Time Counter : 11.25}

EXECUTIVE ACTION ON SB 33

Motion: **SEN. HALLIGAN MOVED TO AMEND SB 33.**

Mr. Day stated that the amendments clarify that inmates convicted in another state or in federal court would not be permitted in Montana's private prison. This was a clarification in order to coordinate with the regional prison section.

CHAIRMAN GROSFIELD asked for clarification of the language regarding the state portion of the regional correctional facility. **Mr. Day** explained that they are cooperating with three counties on state/county prison detention centers. These centers are in Cascade, Dawson, and Missoula Counties. The construction is designed with a county section on one side and a state section on the other side. This legislation would ensure that the state side has the same restrictions, whether in a regional or private prison. It does not interfere's with the county sheriff's jurisdiction on their side of the facility. The Cascade County Sheriff's Department has a contract with the federal government to house pretrial federal detainees in the county jail. The federal government contributed to part of the construction.

CHAIRMAN GROSFIELD questioned whether there were any restrictions on the county. **Mr. Day** stated that was not their jurisdiction so it would be up to the sheriff.

CHAIRMAN GROSFIELD stated that it was his understanding that prisoners who were not safe in another facility could be traded. **Mr. Day** stated that there is an interstate cooperative arrangement where prisons do exchange inmates in order to cooperate with each other regarding inmates who may be a problem or threat in some area that would be managed better in another prison in another state. These agreements are very extensive and require a lot of procedures.

Mr. Day added that there was a lot of discussion in the last session as to whether or not the state should prohibit commercial importation of a large quantity of inmates in this state. The issue is a public safety question. They did not feel it appropriate to encourage or promote bringing in hundreds, possibly thousands, of felony offenders who were not already in the state. This would also promote risk inside the facility and possibly promote risk upon discharge. There are concerns regarding infectious diseases and gang violence. They believe this to be a good policy decision in the interest of public safety. Corrections Corporation of America (CCA) was fully aware of this restriction when they entered into the contract. The contract is to pay as they place. This includes Montana inmates only. Current language was intended to prohibit commercial importation. CCA has large facilities that house federal convicted inmates. The law specifically mentions inmates convicted in other states but not the federal government.

SEN. GRIMES stated that this policy may currently work very well. Later on when we have more beds than needed, perhaps the policy should be to limit the types of people we allow into the state rather than eliminate all commercial importation. Perhaps we

could allow for minimum security inmates from other states. From an economic standpoint this would make a little more sense.

SEN. BARTLETT questioned why the language "a private prison licensed by the department" is being stricken, amendment 3. If the language is stricken, the definition of a regional correctional facility could now include a private prison licensed by the department. **Mr. Day** responded that his understanding is that this would clarify that a private prison is not a regional prison. **Ms. Lane** stated that the original language on lines 8 and 9 clarified that a private prison is not a regional correctional facility. On page 15, line 1, the language states that a regional correctional facility means a correctional facility except the Montana State Prison, the Women's Prison, a private prison licensed by the department or the boot camp. The bill as drafted made it clear that a regional correctional facility did not include a private prison licensed by the department. By taking this language out, it appears that a private prison can be a regional correctional facility and vice versa. She suggested that someplace in the law there should be a clarification that a regional facility is a private prison and vice versa.

David Ohler, Legal Counsel, Department of Corrections, stated that some regional correctional facilities would be considered private prisons and some wouldn't depending on who owns and operates the regional correctional facility. This was not changed in the bill.

Ms. Lane stated that 53-30-602 is a definitional section referring to the part of the law that relates to private correctional facilities and does state that a private correctional facility means a correctional facility that is either privately operated or privately owned and operated. The term includes a regional correctional facility if privately operated or privately owned and operated. In the law it is clear that for purposes of the private correctional facilities part, a regional facility can be a private prison or a private prison can be a regional facility. **Mr. Ohler** agreed.

SEN. BARTLETT stated that perhaps the intent is to allow flexibility for the counties that have regional correctional facilities and want to contract for the operation of that facility which would bring it under the definition of a private prison facility. Even if it is owned by the county if it is operated by a private party, it becomes a private correctional facility.

SEN. HALLIGAN withdrew the motion to amend SB33.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus10aad)